

AMENDED IN ASSEMBLY APRIL 20, 2010

AMENDED IN ASSEMBLY APRIL 8, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2595

Introduced by Assembly Member Huffman

February 19, 2010

An act to amend Section 12979 of the Food and Agricultural Code, and to ~~amend Section 13269 of~~ *add Section 13269.5 to* the Water Code, relating to irrigated agriculture.

LEGISLATIVE COUNSEL'S DIGEST

AB 2595, as amended, Huffman. Irrigated agriculture: pesticide use: operator identification number: water quality: waste discharge ~~requirements: waivers: requirements.~~

Existing law regulates pesticide use, as specified, and provides that a pesticide use report shall be submitted to the county agricultural commissioner or the Director of Pesticide Regulation, as specified, for use in the setting of priorities for, among other things, pesticide use enforcement and pest control research, environmental monitoring, and public health monitoring and research. Existing regulations provide that prior to the purchase or use of pesticides for the production of an agricultural commodity, the operator of the property, *as defined*, or the operator's authorized representative, shall obtain an operator identification number for pesticide use from the county agricultural commissioner of each county where pest control work will be performed.

This bill would codify *that requirement relating to the operator identification number* and ~~would provide, with a specified exception,~~ that, on and after January 1, 2012, ~~as a condition of issuing an operator~~

~~identification number for pesticide use, the county agricultural commissioner shall verify that the operator has been issued either waste discharge requirements or a waiver, as specified would require the county agricultural commissioner to withhold the issuance of an operator identification number for pesticide use if an operator of the property is found to be in violation of specified water quality requirements after all administrative appeals have been completed, except as provided.~~ By imposing new requirements on county agricultural commissioners, this bill would impose a state-mandated local program.

Existing law, the Porter-Cologne Water Quality Control Act, ~~authorizes~~ *requires* the State Water Resources Control Board (*state board*) and a California regional water quality control board (*regional board*) to *prescribe waste discharge requirements, as specified. The act authorizes the state board and a regional board to waive* certain waste discharge requirements as to a specific discharge or type of discharge if the state board or the regional board makes a specified determination. ~~Existing law authorizes the state board or a regional board to waive the monitoring requirements for discharges that it determines do not pose a significant threat to water quality.~~

~~This bill would require the State Water Resources Control Board or a California regional water quality control board~~ *state board or a regional board* to provide ~~evidence~~ *notice* to the Department of Pesticide Regulation and the *appropriate* county agricultural commissioners ~~that if an operator of a the property has been issued a waiver under the waste discharge provisions, in order to support implementation of the provisions relating to the issuance of an operator identification number for pesticide use, as defined, is in violation of any specified water quality requirements after all administrative appeals have been completed.~~ The bill would also make a technical, nonsubstantive change to the provisions. ~~By imposing new requirements on regional water quality control boards, this bill would impose a state-mandated local program.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12979 of the Food and Agricultural Code
2 is amended to read:

3 12979. (a) A pesticide use report shall be submitted to the
4 commissioner or director on a form and in a manner prescribed
5 by the director. The data from the pesticide use reports shall be
6 considered in setting priorities for food monitoring, pesticide use
7 enforcement, farm worker safety programs, environmental
8 monitoring, pest control research, public health monitoring and
9 research, and similar activities by the department, or by the
10 department in cooperation with other state, regional, or local
11 agencies with appropriate authority.

12 (b) Pursuant to Section 6622 of Title 3 of the California Code
13 of Regulations, or any successor regulation, prior to the purchase
14 or use of pesticides for the production of an agricultural
15 commodity, the operator of the property, or the operator's
16 authorized representative, shall obtain an operator identification
17 number for pesticide use from the county agricultural commissioner
18 of each county where pest control work will be performed.

19 ~~(c) As of January 1, 2012, as a condition of issuing an operator~~
20 ~~identification number for pesticide use pursuant to subdivision (b),~~
21 ~~the county agricultural commissioner shall verify that the operator~~
22 ~~has been issued either waste discharge requirements pursuant to~~
23 ~~Section 13263 of the Water Code or a waiver pursuant to Section~~
24 ~~13269 of the Water Code. This requirement shall not apply in any~~
25 ~~county for which the regional water quality control board has not~~
26 ~~adopted requirements relating to irrigated agriculture.~~

27 *(c) (1) As of January 1, 2012, the county agricultural*
28 *commissioner shall withhold the issuance of an operator*
29 *identification number for pesticide use pursuant to subdivision (b)*
30 *if the State Water Resources Control Board or a California*
31 *regional water quality control board finds the grower or operator*
32 *to be in violation of any of the following water quality requirements*
33 *after all administrative appeals have been completed:*

34 *(A) Failure to furnish a report required pursuant to Section*
35 *13267 of the Water Code.*

1 (B) Failure to obtain an individual or general waiver of waste
2 discharge requirements relating to irrigated agriculture pursuant
3 to Section 13269 of the Water Code.

4 (C) Failure to comply with individual or general waste
5 discharge requirements relating to irrigated agriculture pursuant
6 to Section 13263 of the Water Code.

7 (2) This subdivision shall not apply in any county for which the
8 regional water quality control board has not adopted a requirement
9 that growers or operators obtain coverage under waste discharge
10 requirements, or a waiver of waste discharge requirements,
11 relating to irrigated agriculture.

12 (d) The director may adopt regulations to carry out the
13 provisions of this section. The director shall consult with the State
14 Water Resources Control Board and with county agricultural
15 commissioners in the development of regulations relating to
16 subdivision (c) in order to ensure that any requirements imposed
17 shall result in minimal disruption to the process of issuing operator
18 identification numbers for pesticide use.

19 ~~SEC. 2.— Section 13269 of the Water Code is amended to read:~~

20 ~~13269. (a) (1) On and after January 1, 2000, the provisions~~
21 ~~of subdivisions (a) and (c) of Section 13260, subdivision (a) of~~
22 ~~Section 13263, or subdivision (a) of Section 13264 may be waived~~
23 ~~by the state board or a regional board as to a specific discharge or~~
24 ~~type of discharge if the state board or a regional board determines,~~
25 ~~after any necessary state board or regional board meeting, that the~~
26 ~~waiver is consistent with any applicable state or regional water~~
27 ~~quality control plan and is in the public interest. The state board~~
28 ~~or a regional board shall give notice of any necessary meeting by~~
29 ~~publication pursuant to Section 11125 of the Government Code.~~

30 ~~(2) A waiver shall not exceed five years in duration, but may~~
31 ~~be renewed by the state board or a regional board. The waiver shall~~
32 ~~be conditional and may be terminated at any time by the state board~~
33 ~~or a regional board. The conditions of the waiver shall include,~~
34 ~~but need not be limited to, the performance of individual, group,~~
35 ~~or watershed-based monitoring, except as provided in paragraph~~
36 ~~(3). Monitoring requirements shall be designed to support the~~
37 ~~development and implementation of the waiver program, including,~~
38 ~~but not limited to, verifying the adequacy and effectiveness of the~~
39 ~~waiver's conditions. In establishing monitoring requirements, the~~
40 ~~regional board may consider the volume, duration, frequency, and~~

1 constituents of the discharge; the extent and type of existing
2 monitoring activities, including, but not limited to, existing
3 watershed-based, compliance, and effectiveness monitoring efforts;
4 the size of the project area; and other relevant factors. Monitoring
5 results shall be made available to the public.

6 (3) ~~The state board or a regional board may waive the~~
7 ~~monitoring requirements described in this subdivision for~~
8 ~~discharges that it determines do not pose a significant threat to~~
9 ~~water quality.~~

10 (4) ~~The state board or a regional board shall provide evidence~~
11 ~~to the Department of Pesticide Regulation and the county~~
12 ~~agricultural commissioners that an operator of a property has been~~
13 ~~issued a waiver under this section, in order to support~~
14 ~~implementation of subdivision (c) of Section 12979 of the Food~~
15 ~~and Agricultural Code.~~

16 (5) (A) ~~The state board or a regional board may include as a~~
17 ~~condition of a waiver the payment of an annual fee established by~~
18 ~~the state board in accordance with subdivision (f) of Section 13260.~~

19 (B) ~~Funds generated by the payment of the fee shall be deposited~~
20 ~~in the Waste Discharge Permit Fund for expenditure, upon~~
21 ~~appropriation by the Legislature, by the state board or appropriate~~
22 ~~regional board for the purpose of carrying out activities limited to~~
23 ~~those necessary to establish and implement the waiver program~~
24 ~~pursuant to this section. The total amount of annual fees collected~~
25 ~~pursuant to this section shall not exceed the costs of those activities~~
26 ~~necessary to establish and implement waivers of waste discharge~~
27 ~~requirements pursuant to this section.~~

28 (C) ~~In establishing the amount of a fee that may be imposed on~~
29 ~~irrigated agriculture operations pursuant to this section, the state~~
30 ~~board shall consider relevant factors, including, but not limited to,~~
31 ~~all of the following:~~

32 (i) ~~The size of the operations.~~

33 (ii) ~~Any compliance costs borne by the operations pursuant to~~
34 ~~state and federal water quality regulations.~~

35 (iii) ~~Any costs associated with water quality monitoring~~
36 ~~performed or funded by the operations.~~

37 (iv) ~~Participation in a watershed management program approved~~
38 ~~by the applicable regional board.~~

39 (D) ~~In establishing the amount of a fee that may be imposed on~~
40 ~~silviculture operations pursuant to this section, the state board shall~~

1 consider relevant factors, including, but not limited to, all of the
2 following:

3 (i) The size of the operations.

4 (ii) Any compliance costs borne by the operations pursuant to
5 state and federal water quality regulations.

6 (iii) Any costs associated with water quality monitoring
7 performed or funded by the operations.

8 (iv) The average annual number of timber harvest plans
9 proposed by the operations.

10 (6) The state board or a regional board shall give notice of the
11 adoption of a waiver by publication within the affected county or
12 counties as set forth in Section 6061 of the Government Code.

13 (b) (1) A waiver in effect on January 1, 2000, shall remain valid
14 until January 1, 2003, unless the regional board terminates that
15 waiver prior to that date. All waivers that were valid on January
16 1, 2000, and granted an extension until January 1, 2003, and not
17 otherwise terminated, may be renewed by a regional board in
18 five-year increments.

19 (2) Notwithstanding paragraph (1), a waiver for an onsite sewage
20 treatment system that is in effect on January 1, 2002, shall remain
21 valid until June 30, 2004, unless the regional board terminates the
22 waiver prior to that date. Any waiver for onsite sewage treatment
23 systems adopted or renewed after June 30, 2004, shall be consistent
24 with the applicable regulations or standards for onsite sewage
25 treatment systems adopted or retained in accordance with Section
26 13291.

27 (e) Upon notification of the appropriate regional board of the
28 discharge or proposed discharge, except as provided in subdivision
29 (d), the provisions of subdivisions (a) and (c) of Section 13260,
30 subdivision (a) of Section 13263, and subdivision (a) of Section
31 13264 do not apply to a discharge resulting from any of the
32 following emergency activities:

33 (1) Immediate emergency work necessary to protect life or
34 property or immediate emergency repairs to public service facilities
35 necessary to maintain service as a result of a disaster in a
36 disaster-stricken area in which a state of emergency has been
37 proclaimed by the Governor pursuant to Chapter 7 (commencing
38 with Section 8550) of Division 1 of Title 2 of the Government
39 Code.

~~(2) Emergency projects undertaken, carried out, or approved by a public agency to maintain, repair, or restore an existing highway, as defined in Section 360 of the Vehicle Code, except for a highway designated as an official state scenic highway pursuant to Section 262 of the Streets and Highways Code, within the existing right-of-way of the highway, damaged as a result of fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide within one year of the damage. This paragraph does not exempt from this section any project undertaken, carried out, or approved by a public agency to expand or widen a highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide.~~

~~(d) Subdivision (c) is not a limitation of the authority of a regional board under subdivision (a) to determine that any provision of this division shall not be waived or to establish conditions of a waiver. Subdivision (c) shall not apply to the extent that it is inconsistent with any waiver or other order or prohibition issued under this division.~~

~~(e) The regional boards and the state board shall require compliance with the conditions pursuant to which waivers are granted under this section.~~

~~(f) Prior to renewing any waiver for a specific type of discharge established under this section, the state board or a regional board shall review the terms of the waiver policy at a public hearing. At the hearing, the state board or a regional board shall determine whether the discharge for which the waiver policy was established should be subject to general or individual waste discharge requirements.~~

SEC. 2. Section 13269.5 is added to the Water Code, to read:

13269.5. (a) The state board or a regional board shall provide notice to the Department of Pesticide Regulation and the appropriate county agricultural commissioners if, after all administrative appeals are completed, an operator of the property is in violation of any of the water quality requirements listed in subdivision (c) of Section 12979 of the Food and Agricultural Code.

(b) As used in this section, "operator of the property" has the same meaning as set forth in Section 6000 of Title 3 of the California Code of Regulations.

1 SEC. 3. If the Commission on State Mandates determines that
2 this act contains costs mandated by the state, reimbursement to
3 local agencies and school districts for those costs shall be made
4 pursuant to Part 7 (commencing with Section 17500) of Division
5 4 of Title 2 of the Government Code.

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